

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

UNITED STATES OF AMERICA

VERSUS

CRIMINAL ACTION NO. 4:05CR95-P-B

KEVIN MATTHEWS

ORDER

This cause is before the Court on defendant Kevin Matthews' Motion in Limine [511]. The Court, having reviewed the motion, the response, the authorities cited and being otherwise fully advised in the premises, finds as follows, to-wit:

Defendant Matthews is charged in with conspiracy to possess and distribute cocaine and cocaine base in Count 1 of a twenty-four count indictment involving some thirty-seven defendants. His motion requests exclusion of transcripts and testimony pertaining to three recordings of telephone conversations between Matthews and one of his co-defendants. He avers that the recorded telephone conversations do not relate to the sale of cocaine or cocaine base; therefore, the conversations are irrelevant to the charge in the indictment. In the alternative, Matthews contends that the evidence is subject to exclusion under F.R.E. 403 on grounds of undue prejudice.

In response to the instant motion, the government maintains that the telephone conversations at issue are relevant in that the conversations concern acquisition of the drugs which form the basis of the charge in the indictment and that the conversations furthered the objectives of the conspiracy and are admissible under F.R.E. 801(d)(2)(E). United States v. Cornett, 195 F.3d 776, 782 (5th Cir. 1999). The Court concurs with the government's position.

As a further matter, the intercepted telephone conversations are not subject to exclusion under Rule 403. The telephone calls are highly probative direct evidence of Matthews' participation in the drug conspiracy. Defendant has failed to articulate any specific undue prejudice that would inure in the event of their admission. Accordingly, the defendant's motion is not well-taken and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that defendant Kevin Matthews' Motion in Limine [511] is not well-taken and should be, and hereby is, DENIED.

SO ORDERED, this the 22nd day of August, 2006.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE